

State of Colorado



Bill Ritter, Jr.
Governor

Rich Djokic
Board Chair

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING February 19, 2008

A public meeting of the State Personnel Board will be held on **Tuesday, February 19, 2008, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.** The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by February 13, 2008.

I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

II. REQUESTS FOR RESIDENCY WAIVERS

February 1, 2008 Report on Residency Waivers

III. PENDING MATTERS

A. Cases on Remand

1. Leo Bellio v. Department of Revenue, State Personnel Board case number 2005B052, Court of Appeals No. 06CA1377.

On December 23, 2005, the Initial Decision of the Administrative Law Judge was issued. Complainant filed his Notice of Appeal on January 18, 2006; Respondent filed its Notice of Appeal on January 23, 2006. On May 26, 2006, the Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial Decision of the Administrative Law Judge an order of the Board.

On July 10, 2006, Complainant filed a Notice of Appeal at the Court of Appeals, and the Board filed the Certificate of Record of Administrative Proceedings Before the State Personnel Board at the Court of Appeals on October 4, 2006.

On January 4, 2008, the Mandate of the Court of Appeals was issued, "Order Reversed and Case Remanded with Directions," stating, "Accordingly, we conclude that the Board erred in declining to award Bellio reasonable attorney fees. Bellio requested, and we further conclude that he is entitled to reasonable attorney fees on appeal. The amount of such fees must be determined on

remand. The order is set aside, and the cause is remanded to the State Personnel Board for further proceedings consistent with this opinion."

2. Sean McGuire v. Department of Revenue, State Personnel Board case number 2004G080(C), Court of Appeals No. 06CA1532.

On May 10, 2006, the Preliminary Recommendation of the Administrative Law Judge was issued. On June 22, 2006, the Order of the State Personnel Board Denying Petition for Hearing was issued.

On July 27, 2006, Complainant filed a Notice of Appeal at the Court of Appeals, and the Board filed the Certificate of Record of Administrative Proceedings Before the State Personnel Board at the Court of Appeals on October 25, 2006.

On January 25, 2008, the Mandate of the Court of Appeals was issued, Order Reversed and Case Remanded with Directions, reversing the Board Order, remanding the case "to the Board to conduct an evidentiary hearing on McGuire's constitutional claim" and "on whether McGuire was discriminated against on the basis of age or disability when he was not hired for the Criminal Investigator II position," and declining to award attorney fees.

IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Robert Todd Gonser v. Department of Transportation, State Personnel Board case number 2007B098 (September 4, 2007).

Complainant appealed his disciplinary thirty-day suspension, his one-year disciplinary demotion from a Professional Engineer I to an Engineer in Training III, and the prohibition on in-state, work-related overnight travel trips for a period of one year. He sought reduction or elimination of the demotion and/or the suspension, as well as removal of his travel restrictions. After hearing, the ALJ determined that Complainant committed the acts for which he was disciplined, that is, driving a CDOT truck while intoxicated, and hitting two parked vehicles. The ALJ also found that the appointing authority's action was not arbitrary, capricious, or contrary to rule or law because she used reasonable care and diligence to gather all of the relevant information concerning the allegations against Complainant; reviewed all of the potentially relevant policies and procedures, the police report, the accident report, the field sobriety test results, the results of Complainant's blood alcohol level, and a report from two persons who interviewed Complainant; and considered all of the information provided by Complainant during the Board Rule 6-10 meeting, email he sent her following the meeting, and his mitigating circumstances. Affirming Respondent's actions and dismissing Complainant's appeal with prejudice, the ALJ concluded that the discipline imposed was within the range of reasonable alternatives.

- B. Samuel Forte Jr. v. Department of Human Services, Spring Creek Youth Service Center, State Personnel Board case number 2008G016 (September 11, 2007).

On August 10, 2007, Complainant signed a resignation in lieu of termination form. In signing the resignation form, Complainant forfeited his right to appeal his separation of employment to the Board, although he did file a petition for hearing on August 21, 2007. Complainant did not withdraw his resignation within two business days of submitting his resignation. On September 11, 2007, the ALJ dismissed this case with prejudice.

V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

- A. John Redding v. Department of Natural Resources, Division of Water Resources, State Personnel Board case number 2008S002.

Complainant, a certified Professional Engineer I, employed by the Department of Natural Resources, Division of Water Resources (DWR), filed a petition for hearing on July 16, 2007, arguing that he was discriminated against, on the basis of sex, when he was not selected for one of two promotions. As remedies, Complainant seeks: 1) that the retaliatory and harassing environment that he has been forced to work in immediately cease; 2) that Jack Byers and Mark Haynes stop making slanderous remarks about Complainant's character and that they individually retract all comments made to DWR staff members; 3) that Complainant and Respondent communicate by talking when possible (rather than sending e-mails); 4) that Complainant and the parties involved at DWR offer each other "amnesty" for all past (actual or perceived) transgressions; 5) that an unbiased third party be appointed to periodically check on the success of any resolution between the parties; 6) that Complainant, Byers and Haynes attend classes relating to creating a healthier work environment; 7) that Complainant be rightfully promoted to Professional Engineer Dam Safety Engineer with a minimum 10% raise, and that Complainant receive "back pay" for the time passed since the hiring of the two Dam Safety Engineers; 8) that Complainant be assigned dams in the northwest part of Division 1; 9) that Complainant receive apologies from Haynes and Byers; and 10) that Complainant's wife receive an apology from Byers.

Respondent argues that Complainant failed to meet his burden of proof of showing that grounds exist that merit a full hearing and that a hearing be denied.

On February 5, 2008 a Preliminary Recommendation was issued by the Administrative Law Judge, recommending a hearing be denied.

- B. Kathleen J. Schultz v. Colorado State University, College of Agricultural Sciences, State Personnel Board case number 2008G029.

Complainant, an Administrative Assistant III with Colorado State University, College of Agricultural Sciences, filed a petition for hearing on October 15, 2007, challenging the imposition of a corrective action. In her petition for hearing, Complainant alleges that Respondent retaliated against her for filing an appeal of her performance evaluation.

Respondent asserts that Complainant's petition for hearing does not state valid issues that would merit a hearing, Complainant has not provided any evidence to support a retaliation claim, and the corrective action was not arbitrary, capricious or contrary to rule or law.

On February 6, 2008, a Preliminary Recommendation was issued by the Administrative Law Judge, recommending a hearing be denied.

- C. Mathew Christensen v. Department of Public Health and Environment, State Personnel Board case number 2008G034.

Complainant, a Statistical Analyst II at the Department of Public Health and Environment, filed a petition for hearing on October 29, 2007, challenging the imposition of a corrective action. Complainant alleges that Respondent violated the grievance procedure, as "only one side of the evidence was pursued" by the appointing authority and his supervisor's

retaliatory behavior and disdain for due process" were ignored during the grievance process.

Respondent asserts that Complainant is limited to the issues raised within the Step II grievance, the decision of the appointing authority was not arbitrary or capricious, and the retaliation that Complainant alleges to have occurred does not bring this matter within the Board's jurisdiction to grant a discretionary hearing.

On February 7, 2008, a Preliminary Recommendation was issued by the Administrative Law Judge, recommending a hearing be denied

VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

There are no Initial Decisions or Other Final Orders of the Administrative Law Judges before the Board this month.

VII. REVIEW OF THE MINUTES FROM THE JANUARY 15, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 15, 2008 PUBLIC MEETING:

- A. Randy Pfaff v. Department of Corrections and State Personnel Board, Court of Appeals No. 05CA1937, State Personnel Board case number 2004B112(C).

In response to the January 3, 2008 Order Affirmed in Part, Reversed in Part and Case Remanded with Directions of the Court of Appeal and Mandate, the Board ordered the Initial Decision of the ALJ, with regard to Conclusions of Law 2 ("Complainant did not commit the acts upon which discipline was based") and 3 ("Respondent's demotion of Complainant was arbitrary and capricious and contrary to rule or law"), is affirmed, and Respondent is ordered to reinstate Complainant to the rank of Lieutenant retroactive to the date of demotion and to pay Complainant full back pay and benefits to the date of demotion. In addition, the Board ordered that, upon receipt of the record from the Court of Appeals, Board staff shall set a briefing schedule on the issue of reconsideration of the award of attorney fees and costs to Complainant, as mandated by the Court of Appeals.

IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES, DPA

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Staff Activities

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the January 15, 2008 Executive Session
- C. Other Business

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NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

March 18, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
April 15, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
May 20, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
June 17, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
July 15, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
August 19, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
September 16, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
October 21, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
November 18, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604
December 16, 2008	Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604